

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2360

To amend the Magnuson Fishery Conservation and Management Act of 1976,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, JULY 20), 1994

Mr. BREAU (for himself, Mrs. MURRAY, Mr. JOHNSTON, Mr. GORTON, and  
Mrs. HUTCHISON) introduced the following bill; which was read twice and  
referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Magnuson Fishery Conservation and  
Management Act of 1976, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **TITLE I—MAGNUSON FISHERY CONSERVA-**  
4       **TION AND MANAGEMENT ACT AMEND-**  
5       **MENTS.**

6       **SEC. 101. SHORT TITLE.**

7       This title may be cited as the “Magnuson Fishery  
8       Conservation and Management Act Amendments of  
9       1994”.

1 **SEC. 102. AMENDMENTS TO FINDINGS, PURPOSES AND POL-**  
2 **ICY.**

3 Section 2 of the Magnuson Fishery Conservation and  
4 Management Act (Public Law 94-265), as amended (16  
5 U.S.C. 1801), is amended—

6 (1) in subsection (b)(5), by striking the word  
7 “and” that precedes “(B)”, and adding at the end  
8 thereof: “(C) which are free from conflicts of inter-  
9 est affecting any Council member; and”; and

10 (2) in subsection (c)(3), by inserting “consist-  
11 ent with conflict of interest law”, between “citizens”  
12 and the semicolon.

13 **SEC. 103. AMENDMENTS TO DEFINITIONS.**

14 Section 3 of the Magnuson Fishery Conservation and  
15 Management Act (Public Law 94-265), as amended (16  
16 U.S.C. 1802), is amended by—

17 (1) revising paragraph (20) to read as follows:

18 “(20) The term ‘observer’ means a person—

19 “(A) required or authorized to be carried  
20 on a vessel for conservation and management  
21 purposes by regulations or permits under this  
22 Act; and

23 “(B) if assigned the responsibilities of col-  
24 lecting or interpreting data necessary for the  
25 conservation and management of a fishery, that  
26 has received adequate training and has dem-

1           onstrated to the Secretary competence in fish-  
2           eries science and statistical analysis at a level  
3           sufficient to enable such person to correctly ful-  
4           fill such responsibilities.”; and

5           (2) inserting “United States consumers” imme-  
6           diately following “food production” in paragraph  
7           21(A).

8   **SEC. 104. AMENDMENTS TO NATIONAL STANDARDS FOR**  
9                           **FISHERY CONSERVATION AND MANAGEMENT.**

10          (a) Section 301(a) of the Magnuson Fishery Con-  
11          servation and Management Act (Public Law 94–265), as  
12          amended (16 U.S.C. 1851(a)), is amended—

13               (1) in paragraph (5), by inserting “, including  
14               the reduction of excessive fishing capacity and avoid-  
15               able bycatch and discards as technologically fea-  
16               sible” immediately after “resource” and before the  
17               semicolon; and

18               (2) adding the following new subsection at the  
19               end thereof:

20               “(8) Conservation and management measures  
21               shall promote safety of life and property at sea.”.

22          (b) Section 301(b) of the Magnuson Fishery Con-  
23          servation and Management Act (Public Law 94–265), as  
24          amended (16 U.S.C. 1851(b)), is amended by striking the

1 word “advisory” and the phrase “(which shall not have  
2 the force and effect of law),”.

3 **SEC. 105. AMENDMENTS TO REGIONAL FISHERY MANAGE-**  
4 **MENT COUNCILS.**

5 (a) Section 302(a) of the Magnuson Fishery Con-  
6 servation and Management Act (Public Law 94–265), as  
7 amended (16 U.S.C. 1852(a)), is amended by revising  
8 paragraph (6) to read as follows:

9 “(6) PACIFIC COUNCIL.—The Pacific Fishery  
10 Management Council shall consist of the States Cali-  
11 fornia, Oregon, Washington, and Idaho and shall  
12 have authority over the fisheries in the Pacific  
13 Ocean seaward of such States. The Pacific Council  
14 shall have 14 voting members, including 8 appointed  
15 by the Secretary in accordance with subsection  
16 (b)(2) (at least one of whom shall be appointed from  
17 each such State), and including one appointed from  
18 an Indian tribe with federally recognized fishing  
19 rights from California, Oregon, Washington, or  
20 Idaho.”.

21 (b) Section 302(b) of the Magnuson Fishery Con-  
22 servation and Management Act (Public Law 94–265), as  
23 amended (16 U.S.C. 1852(b)), is amended—

24 (1) by revising subparagraph (C) of subsection  
25 (b)(1) to read as follows:

1           “(C) The members required to be appointed by  
2           the Secretary in accordance with subsections (b) (2)  
3           and (5).”;

4           (2) by inserting the following new sentence im-  
5           mediately after the first sentence in paragraph  
6           (2)(B): “In making such an appointment, the Sec-  
7           retary shall give the lowest priority to paid rep-  
8           resentatives and lobbyists of fishery associations un-  
9           less such individuals are also directly employed in a  
10          commercial fishery.”;

11          (3) by adding the following new subparagraph  
12          at the end of subsection (b)(2):

13          “(E) As trustees of the Nation’s fishery resources,  
14          all voting members of each Council shall take the following  
15          oath:

16                 ‘I, \_\_\_\_\_, as a duly appointed member  
17                 of a Regional Fishery Management Council estab-  
18                 lished under the Magnuson Fishery Conservation  
19                 and Management Act, hereby promise to conserve  
20                 and manage the living resources of the United  
21                 States of America by carrying out the business of  
22                 the Council for the greatest overall benefit of the  
23                 Nation, without regard to my own personal benefit.  
24                 I recognize my responsibility to serve as a knowl-  
25                 edgeable and experienced trustee of the Nation’s ma-

1       rine fishery resources, being careful to balance com-  
2       peting private or regional interests, and always  
3       aware and protective of the public interest in those  
4       resources. I commit myself to uphold the provisions,  
5       standards, and requirements of the Magnuson Fish-  
6       ery Conservation and Management Act and other  
7       applicable law, and shall conduct myself at all times  
8       according to the rules of conduct prescribed by the  
9       Secretary of Commerce. I fully understand the civil  
10      and criminal consequences of my failure to disclose  
11      properly my financial interests and to recuse myself  
12      from Council actions in accordance with the require-  
13      ment of law. This oath is freely given and without  
14      mental reservation or purpose of evasion.’ ”;

15           (4) by renumbering paragraph (5) as paragraph  
16      (6), and inserting the following new paragraph (5):

17      “(5)(A) The Secretary shall appoint to the Pacific  
18      Fishery Management Council one representative, des-  
19      ignated by the Secretary of the Interior, of an Indian tribe  
20      with federally recognized fishing rights from California,  
21      Oregon, Washington, or Idaho, from a list of not less than  
22      three individuals submitted by the tribal governments. The  
23      representative shall serve for a term of three years and  
24      may not be reappointed to the consecutive term.

1 “(B) Representation shall be rotated among the  
2 tribes taking into consideration—

3 “(i) the qualifications of the individuals on the  
4 list referred to in subparagraph (A),

5 “(ii) the various treaty rights of the Indian  
6 tribes involved and judicial cases that set forth how  
7 those rights are to be exercised, and

8 “(iii) the geographic area in which the tribe of  
9 the representative is located.

10 “(C) With respect to appointments made under this  
11 paragraph, a vacancy occurring prior to the expiration of  
12 any term shall be filled in the same manner set out in  
13 subparagraphs (A) and (B), except that the Secretary may  
14 use the list from which the vacating representative was  
15 chosen. A representative appointed to fill such a vacancy  
16 may not be reappointed to a consecutive term.”; and

17 (5) by revising renumbered paragraph (6) to  
18 read as follows:

19 “(6) The Secretary may remove for cause any mem-  
20 ber of a Council required to be appointed by the Secretary  
21 in accordance with subsections (b)(2) and (5) if—

22 “(A) the Council concerned first recommends  
23 removal by not less than two-thirds of the members  
24 who are voting members and submits such removal  
25 recommendation to the Secretary in writing includ-

1       ing a statement of the basis for the recommendation;  
2       or

3               “(B) the Secretary makes a written determina-  
4       tion, including a statement of the basis for the de-  
5       termination, that the member has violated the con-  
6       flict of interest prohibitions of subsection 302(k).”.

7       (c) Section 302(e) of the Magnuson Fishery Con-  
8       servation and Management Act (Public Law 94-265), as  
9       amended (16 U.S.C. 1852(e)), is amended by revising  
10      paragraph (1) to read as follows:

11             “(1)(A) A majority of the voting members of  
12      any Council shall constitute a quorum, but one or  
13      more such members designated by the Council may  
14      hold hearings. Except as provided in subparagraph  
15      (B), all decisions of any Council shall be by majority  
16      vote of the voting members present and voting.

17             “(B) A Council decision that results in an eco-  
18      nomic allocation among United States fishermen  
19      shall require an affirmative vote by not less than  
20      two-thirds of the voting members present and vot-  
21      ing.”.

22       (d) Section 302(g) of the Magnuson Fishery Con-  
23       servation and Management Act (Public Law 94-265), as  
24       amended (16 U.S.C. 1852(g)), is amended by revising  
25       paragraph (1) to read as follows:



1           “(1) Each Council shall establish and maintain,  
2           and appoint the members of, a scientific and statis-  
3           tical committee which shall—

4                   “(A) determine the allowable biological  
5                   catch for each fishery under the Council’s juris-  
6                   diction based on the best scientific information  
7                   available;

8                   “(B) submit reports on its findings, includ-  
9                   ing all determinations of allowable biological  
10                  catch, to the Secretary, the affected Council,  
11                  the National Marine Fisheries Service, inter-  
12                  ested state agencies, and, upon request, other  
13                  interested parties; and

14                  “(C) otherwise assist the Council in the de-  
15                  velopment, collection, and evaluation of such  
16                  statistical, biological, economic, social, and  
17                  other scientific information as is relevant to  
18                  such Council’s development and amendment of  
19                  any fishery management plan.”.

20           (e) Section 302(h) of Magnuson Fishery Conserva-  
21           tion and Management Act (Public Law 94–265), as  
22           amended (16 U.S.C. 1852(h)), is amended by redesignat-  
23           ing paragraphs (4), (5), and (6) as paragraphs (5), (6),  
24           and (7) respectively, and inserting the following new para-  
25           graph:

1           “(4) fully consider and evaluate all viable alter-  
2           natives for achieving the conservation and manage-  
3           ment objectives of any fishery management plan pre-  
4           pared by the Council;”.

5           (f) Section 302(j) of the Magnuson Fishery Conserva-  
6           tion and Management Act (Public Law 94-265), as  
7           amended (16 U.S.C. 1852(j)), is amended by—

8           (1) revising paragraph (1) to read as follows:

9           “(1) The Federal Advisory Committee Act (5  
10          U.S.C. App. 1) shall apply to the Councils, but not  
11          to the scientific and statistical committees or advi-  
12          sory panels of the Councils.”;

13          (2) adding the following at the end of para-  
14          graph (2)(C): “Interested persons may propose to  
15          modify the published agenda of a meeting by sub-  
16          mitting to a Council, panel or committee within 10  
17          calendar days of the published date of the meeting  
18          a petition containing a written description of the  
19          proposed modification signed by not less than two  
20          Council members. In order to facilitate meaningful  
21          public participation, all final agendas shall be made  
22          available to the public in advance of a meeting and  
23          shall be adhered to.”;

24          (3) adding the following at the end of para-  
25          graph (2)(D): “All data submitted to a Council by

1 interested person shall include a statement of the  
2 source and date of such information. No data may  
3 be submitted to or entered into the record of a  
4 Council that has not been reviewed and verified to  
5 be accurate by the Council's Scientific and Statis-  
6 tical Committee. All oral and written statements and  
7 certified data submitted to a Council shall be pre-  
8 ceded by a statement of the qualifications and inter-  
9 est, including financial interest, of the witness in the  
10 subject of the oral or written statement or data. All  
11 written statements submitted to a Council shall be  
12 attested to by the author and all oral statements  
13 shall be made under oath.”;

14 (4) revising paragraph (2)(E) to read as fol-  
15 lows:

16 “(E) A report of each meeting, including  
17 public hearings held under subsection (h)(3),  
18 shall be filed with the Secretary and made  
19 available to the public and shall contain a  
20 record of the persons present, a written tran-  
21 script of the discussion, and copies of all writ-  
22 ten statements, including financial interest dis-  
23 closure statements, and certified data filed.”;

24 (5) striking “minutes” in paragraph (2)(F) and  
25 inserting “reports” in lieu thereof; and

1           (6) inserting the following new subparagraph at  
2     the end thereof:

3           “(G) A copy of each document and record  
4           referred to in this paragraph shall be a part of  
5           any submission to the Secretary under section  
6           304(a) and shall constitute part of the Adminis-  
7           trative record for purposes of section 305(b).”.

8           (g) Section 302(k) of Magnuson Fishery Conserva-  
9     tion and Management Act (Public Law 94–265), as  
10    amended (16 U.S.C. 1852(k)), is amended—

11          (1) by inserting “AND RECUSAL” immediately  
12       before the period at the end of the subsection head-  
13       ing;

14          (2) by revising paragraph (2)(B) to read as fol-  
15       lows:

16               “(B) the spouse, child, grandchild, parent,  
17               sibling, or partner of the individual; and”;

18          (3) by revising paragraph (3)(B) to read as fol-  
19       lows:

20               “(B) in the case of an affected individual  
21               referred to in paragraph (1) (B) or (C), to the  
22               appointing authority not less than 14 days prior  
23               to taking office.”;

1           (4) by striking the period at the end of para-  
2           graph (5)(B) and inserting in lieu thereof “and the  
3           office of the Secretary; and”;

4           (5) by adding the following new subparagraph  
5           at the end of paragraph (5):

6                   “(C) be inserted at the beginning of any  
7           written transcript of Council meetings required  
8           under section 302(j).”;

9           (6) in paragraph (6) by striking “the regula-  
10          tions” and all that follows and inserting the follow-  
11          ing: “this subsection shall require the action to be  
12          reconsidered by the Council without the participation  
13          of the affected individual if the vote of the affected  
14          individual would have resulted in a different action  
15          by the Council under subsection (e)(1).”;

16          (7) by redesignation paragraph (7) as para-  
17          graph (8) and inserting after paragraph (6) the fol-  
18          lowing:

19                   “(7)(A) A Council member required to disclose  
20          a financial interest under paragraph (2) shall recuse  
21          himself or herself from voting on Council actions  
22          that have a direct and predictable effect on that in-  
23          terest. A Council action shall be considered to have  
24          a direct and predictable effect on a financial interest  
25          if there is a close causal link between the Council

1 and any expected effect of the Council action on the  
2 financial interest. An effect may be considered to be  
3 direct and predictable even through it does not occur  
4 immediately.

5 “(B) If the authority of a Council member to  
6 vote in an action is challenged by another Council  
7 member on the basis of subparagraph (A), the Coun-  
8 cil shall provide to the Council member whose au-  
9 thority is challenged an opportunity to respond.

10 “(C) If, after being provided an opportunity to  
11 respond, the Council member does not recuse him-  
12 self or herself, and that member of the Council  
13 member challenging his or her authority requests  
14 that the National Marine Fisheries Service Regional  
15 Director for the region of the Council make a deter-  
16 mination, then the Regional Director, after consulta-  
17 tion with the National Oceanic and Atmospheric Ad-  
18 ministration General Counsel, shall determine  
19 whether the member is required to recuse himself or  
20 herself under subparagraph (A). If the Regional Di-  
21 rector determines that recusal is required, the mem-  
22 ber shall recuse himself or herself from voting in the  
23 action and shall state for the record, for purposes of  
24 subparagraph (E), how he or she would have voted.

1           “(D) Any Council member may within 14 days  
2 after the determination of the Regional Director  
3 under subparagraph (C) or the vote of a Council  
4 under subsection (e)(1), appeal such determination  
5 or vote to the Secretary, who shall within not more  
6 than 30 calendar days after the date of the appeal  
7 make a final determination of whether the Council  
8 member who is the subject of the appeal is required  
9 to recuse himself or herself.

10           “(E) A vote of a Council with respect to which  
11 an appeal to the Secretary is made under subpara-  
12 graph (D) shall not be final before the date the Sec-  
13 retary issues a determination under subparagraph  
14 (D). If the Secretary determines that the Council  
15 member is not required to recuse himself or herself,  
16 the vote of the member in the action shall be the  
17 vote stated for the record under subparagraph (C).”;

18           (8) in paragraph (8), redesignated, by striking  
19 “with the regulations prescribed under paragraph  
20 (5)” and inserting “this subsection”; and

21           (9) by adding the following new paragraph at  
22 the end thereof:

23           “(9) In fulfilling their responsibilities under this  
24 Act, the Regional Directors of the National Marine  
25 Fisheries Service and all Council staff members shall

1       avoid any action which might result in, or create the  
2       appearance of—

3               “(A) using public office for private gain;

4               “(B) giving preferential treatment to any  
5       person;

6               “(C) impeding Government efficiency or  
7       economy;

8               “(D) losing complete independence or im-  
9       partiality;

10              “(E) making a government decision out-  
11       side official channels; or

12              “(F) affecting adversely the confidence of  
13       the public in the integrity of the Government.”.

14   **SEC. 106. AMENDMENTS TO CONTENTS OF FISHERY MAN-**  
15                   **AGEMENT PLANS.**

16       (a) Section 303(a) of the Magnuson Fishery Con-  
17       servation and Management Act (Public Law 94–265), as  
18       amended (16 U.S.C. 1853(a)), is amended by redesignat-  
19       ing paragraphs (2) through (9) as (3) through (10), re-  
20       spectively, and inserting the following new paragraph:

21              “(2) be based upon—

22              “(A) a full evaluation of all viable alter-  
23       natives for achieving the conservation and man-  
24       agement objectives of the plan; and



1                   “(B) a clear preponderance of evidence in  
2                   the record.”

3           (b) Section 303(d) of the Magnuson Fishery Con-  
4     servation and Management Act (Public Law 94–265), as  
5     amended (16 U.S.C. 1853(d)), is amended by—

6                   (1) striking “or” at the end of paragraph (2);

7                   (2) striking the period at the end of paragraph

8                   (3) and inserting the following in lieu thereof: “;  
9     or”; and

10                  (3) inserting the following new paragraph at  
11     the end thereof:

12                   “(4) when recommended to the Secretary by a  
13     two-thirds majority vote of the voting members of a  
14     Council as necessary to manage a fishery, or to im-  
15     plement a system for limiting access to a fishery,  
16     under its management authority.”.

17     **SEC. 107. AMENDMENTS TO ACTION BY THE SECRETARY.**

18           Section 304 of the Magnuson Fishery Conservation  
19     and Management Act (Public Law 94–265), as amended  
20     (16 U.S.C. 1854), is amended—

21                   (1) in subsection (c)(3), by striking all that fol-  
22     lows “unless”, and inserting the following in lieu  
23     thereof: “the Secretary first makes a written deter-  
24     mination that the fishery is overcapitalized.”.

1           (2) by redesignating subsections (d) through (g)  
2           as subsections (e) through (h) respectively, and in-  
3           serting the following new subsection (d):

4           “(d) ACTION ON REGULATORY AMENDMENTS.—

5           “(1) After the receipt date when the Secretary  
6           receives a regulatory amendment which was pre-  
7           pared by a Council, the Secretary shall—

8           “(A) immediately commence a review of  
9           the regulatory amendment to determine wheth-  
10          er it is consistent with the fishery management  
11          plan, the national standards, the other provi-  
12          sions of this Act, and any other applicable law;  
13          and

14          “(B) immediately publish in the Federal  
15          Register the Council’s proposed regulations for  
16          a 30-day public comment period.

17          “(2)(A) The Secretary shall take action under  
18          this section on any regulatory amendment which the  
19          Council characterizes as being a final regulatory  
20          amendment.

21          “(B) For purposes of this section, ‘receipt date’  
22          means the 5th day after the day on which a Council  
23          transmits to the Secretary a regulatory amendment  
24          that it characterizes as a final regulatory amend-  
25          ment.

1           “(3) If the Secretary does not notify the Coun-  
2       cil in writing of his disapproval or partial dis-  
3       approval by the 60th day after the receipt date, a  
4       regulatory amendment will take effect and be imple-  
5       mented.

6           “(4) If after review the Secretary determines  
7       that the regulatory amendment is not consistent  
8       with the criteria set forth in paragraph (1)(A), the  
9       Secretary shall notify the Council in writing of his  
10      disapproval or partial disapproval of the regulatory  
11      amendment. Such notice shall specify—

12               “(A) the applicable law or provision of the  
13              fishery management plan with which the regu-  
14              latory amendment is inconsistent;

15               “(B) the nature of such inconsistencies;  
16              and

17               “(C) recommendations concerning the ac-  
18              tions that could be taken by the Council to con-  
19              form such regulatory amendment to the re-  
20              quirements of applicable law and the fishery  
21              management plan.

22           “(5) If the Secretary disapproves or partially  
23       disapproves a regulatory amendment, the Council  
24       may submit a revised regulatory amendment to the  
25       Secretary.

1           “(6) After the Secretary receives a revised regu-  
2       latory amendment, the Secretary shall imme-  
3       diately—

4           “(A) commence a review of the regulatory  
5       amendment to determine if it complies with the  
6       criteria set forth in paragraph (1)(A); and

7           “(B) publish the revised regulations in the  
8       Federal Register for a 15-day public comment  
9       period.

10          “(7) Before the close of the 30th day after the  
11       revised receipt date, the Secretary, after taking into  
12       account any public comments, shall complete the re-  
13       view and determine whether the regulatory amend-  
14       ment complies with the criteria set forth in para-  
15       graph (1)(A). If the Secretary determines that the  
16       revised regulatory amendment is not in compliance  
17       with such criteria, he shall immediately notify the  
18       Council of his disapproval. After notifying a Council  
19       of disapproval, the Secretary shall promptly provide  
20       to the Council a written statement of the reasons on  
21       which the disapproval was based and advise the  
22       Council that it may submit a further revised regu-  
23       latory amendment for review and determination  
24       under this paragraph. If the Secretary does not no-  
25       tify the Council in writing of his disapproval or par-

1        tial disapproval by the 30th day after the receipt  
 2        date, a regulatory amendment will take effect and be  
 3        implemented.”.

4        **SEC. 108. AMENDMENTS TO IMPLEMENTATION OF FISH-**  
 5        **ERY MANAGEMENT PLANS.**

6        Section 305(c) of the Magnuson Fishery Conserva-  
 7        tion and Management Act (Public Law 94-265), as  
 8        amended (16 U.S.C. 1855(c)), is amended—

9            (1) in paragraph (2)(A), by inserting “and the  
 10        scientific and statistical committee” between “Coun-  
 11        cil” and the comma;

12          (2) in paragraph (2)(B), by inserting “and the  
 13        scientific and statistical committee by no less than  
 14        two-thirds vote,” between “vote” and “requests”;  
 15        and

16          (3) in paragraph (3)(B), by striking “90 days”  
 17        and inserting the following in lieu thereof: “270  
 18        days: *Provided*, That the public has had an oppor-  
 19        tunity to comment on the proposed emergency regu-  
 20        lation, and, in the case of a Council recommendation  
 21        for emergency regulations, the Council is actively  
 22        preparing a fishery management plan, amendment  
 23        or proposed regulations to address the emergency on  
 24        a permanent basis”.

1 **SEC. 109. AMENDMENTS TO STATE JURISDICTION.**

2 Section 306(a) of the Magnuson Fishery Conserva-  
3 tion and Management Act (Public Law 94-265), as  
4 amended (16 U.S.C. 1856(a)), is amended by—

5 (1) by striking “paragraph (2)” in paragraph  
6 (3) and inserting the following in lieu thereof: “para-  
7 graphs (2) and (4)”;

8 (2) adding the following new paragraph at the  
9 end thereof:

10 “(4) In the limited case of a fishery for which  
11 there is no fishery management plan approved and  
12 implemented pursuant to this Act and for which a  
13 State has a legitimate interest in the management of  
14 the fishery, a State may—

15 “(A) enforce its laws and regulations with  
16 respect to fishing within the EEZ, and the  
17 landing of fish within that State that were  
18 taken from the EEZ, if its laws and regulations  
19 are consistent with an interjurisdictional fish-  
20 eries management plan adopted by a Marine  
21 Fisheries Commission, the national standards,  
22 the other provisions of this Act, any relevant  
23 fishery management plan or amendments there-  
24 to which are approved and implemented under  
25 this Act, and any other applicable law; or

“(B) in the absence of applicable laws and regulations adopted by the appropriate Marine Fisheries Commission, enforce its laws and regulations if the Secretary determines that—

“(i) the fishing in the fishery which occurs within the EEZ is conducted predominantly by vessels registered in that State; and

“(ii) such laws and regulations are consistent with the national standards, the other provisions of this Act, any relevant fishery management plan or amendments thereto which are approved and implemented under this Act, and any other applicable law.”.

**SEC. 110. AMENDMENTS TO PROHIBITED ACTS.**

Section 307(1) of the Magnuson Fishery Conservation and Management Act (Public Law 94-265), as amended (16 U.S.C. 1857(1)), is amended by—

- (1) inserting “present testimony or in any manner” between “willfully” and “submit” in paragraph (I);
- (2) striking “or” at the end of paragraph (M);
- (3) striking the period at the end of paragraph (N) and inserting “; or” in lieu thereof; and

1           (4) adding the following new paragraph at the  
2           end thereof:

3                   “(O) to submit false information, or fail to  
4           submit required information, pursuant to sub-  
5           section 302(k), or for a Council member to fail  
6           to recuse himself or herself as required pursu-  
7           ant to subsection 302(k)(7).”.

8   **SEC. 111. AMENDMENTS TO CRIMINAL OFFENSES.**

9           Section 309(a)(1) of the Magnuson Fishery Con-  
10          servation and Management Act (Public Law 94–265), as  
11          amended (16 U.S.C. 1859(a)(1)), is amended by—

12                   (1) striking “or” that precedes “(L)”;

13                   (2) inserting “or (O)” immediately after “(L)”.

14   **SEC. 112. AMENDMENTS TO ENFORCEMENT.**

15          Section 311(b)(1) of the Magnuson Fishery Con-  
16          servation and Management Act (Public Law 94–265), as  
17          amended (16 U.S.C. 1861(b)(1)), is amended by revising  
18          paragraph (A)(iii) to read as follows:

19                   “(iii) seize any fishing vessel (together  
20                  with its fishing gear, furniture, appur-  
21                  tenances, stores, and cargo) used or em-  
22                  ployed in, or with respect to which there is  
23                  probable cause to believe that such vessel  
24                  was used or employed in, the violation of  
25                  any provision of this Act: *Provided, That*



1 no vessel may be detained for more than  
2 36 hours unless a Federal magistrate de-  
3 termines that such detention is necessary  
4 to prevent a continuing violation of the  
5 Act;”.

6 **SEC. 113. AUTHORIZATION OF APPROPRIATIONS.**

7 Section 406 of the Magnuson Fishery Conservation  
8 and Management Act (Public Law 94-265), as amended  
9 (16 U.S.C. 1822), is amended by adding at the end there-  
10 of:

11 “(20) \$103,218,000 for the fiscal year ending  
12 September 30, 1994, and \$142,502,000 for the fis-  
13 cal year ending September 30, 1995.”.

14 **SEC. 114. EFFECTIVE DATE.**

15 Sections 104 through 112 of this Title shall take ef-  
16 fect 90 days after the date of enactment of this Act. The  
17 Secretary is authorized and directed to proceed during the  
18 90 days after the date of enactment of this Act with such  
19 regulatory proceedings, personnel actions, and other ac-  
20 tivities as he finds necessary to implement fully Sections  
21 104 through 112 of this Title upon their effective date.

1 **TITLE II—TRANSFER OF U.S. FLAG FISH-**  
2 **ING AND PROCESSING VESSEL REG-**  
3 **ISTRIES.**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “U.S. Fishery Capital-  
6 ization Reduction Act of 1994.”.

7 **SEC. 202. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) many United States fisheries are currently  
10 overcapitalized and overcapitalization has diminished  
11 the effectiveness of the Magnuson Fishery Conserva-  
12 tion and Management Act (Public Law 94–265), as  
13 amended (16 U.S.C. 1801 et seq.) and other United  
14 States fishery laws and regulations to achieve Unit-  
15 ed States fishery conservation and management ob-  
16 jectives;

17 (2) significant opportunities exist for United  
18 States vessel owners to pursue ventures with foreign  
19 entities which would result in the permanent trans-  
20 fer of vessel ownership to foreign entities in coun-  
21 tries which may lack long-term political or economic  
22 stability; and

23 (3) in the event that political and economic in-  
24 stability in such foreign countries cause such ven-  
25 tures to fail forcing United States fishing vessels to

1 return to the United States, such vessels would be  
2 denied coastwise trading privileges under United  
3 States law and would be unable to effectively partici-  
4 pate in United States fisheries.

5 (b) PURPOSE.—It is therefore declared to be the pur-  
6 pose of Congress in this Act to promote the reduction in  
7 capitalization in United States fisheries by encouraging  
8 the establishment of foreign fishing ventures that would  
9 result in the permanent transfer of United States fishing  
10 vessels from United States to foreign fisheries.

11 **SEC. 203. APPROVAL FOR CERTAIN FISHING AND FISH**  
12 **PROCESSING VESSELS TO REENTER UNITED**  
13 **STATES COASTWISE TRADE.**

14 (a) REENTRY INTO UNITED STATES FISHERIES AND  
15 COASTWISE TRADE.—

16 (1) RE-ACQUISITION OF RIGHT TO ENGAGE IN  
17 COASTWISE TRADE.—Notwithstanding the first pro-  
18 viso of section 27 of the Merchant Marine Act, 1920  
19 (46 App. U.S.C. 883), a vessel described in sub-  
20 section (b) shall not be prohibited from acquiring  
21 the right to engage in the coastwise trade by reason  
22 of being placed under foreign registry.

23 (2) LIMITATIONS ON SUBSEQUENT OPERATION  
24 IN FISHERIES AND COASTWISE TRADE.—In addition  
25 to other limitations and requirements applicable to

1 operation in the fisheries or coastwise trade, the op-  
2 eration of a vessel described in subsection (b) which  
3 has been sold to a person that is not a citizen of the  
4 United States or placed under foreign registry is  
5 subject to the following limitations:

6 (A) Subject to subparagraph (B), the ves-  
7 sel may only engage in fisheries or coastwise  
8 trade in which it was eligible to engage before  
9 the vessel was placed under foreign registry.

10 (B) The vessel may not engage in any op-  
11 eration other than—

12 (i) fishing,

13 (ii) fish processing, and

14 (iii) the transportation of fish, fish  
15 products, or materials directly related to  
16 fishing or the preparation of fish, to or  
17 from a fishing vessel, fish processing ves-  
18 sel, fish tender vessel, or fish proceeding  
19 facility.

20 (C) All drydocking, conversion, repair (ex-  
21 cept routine maintenance or emergency repair),  
22 or rebuilding of the vessel after the date on  
23 which the vessel is placed under foreign registry  
24 shall be performed in shipyards located in the  
25 United States.

1           (3) EXPIRATION OF AUTHORITY TO REEN-  
2       TER.—Paragraph (1) does not apply to a vessel  
3       after the date that is 10 years after the effective  
4       date of this Title.

5       (b) VESSELS DESCRIBED.—The vessels referred to in  
6       subsection (a) are the following:

7           (1) M/V ALASKAN ENTERPRISE (United States  
8       official number 595760).

9           (2) M/V AMERICAN ENTERPRISE (United States  
10      official number 594803).

11          (3) M/V ARCTIC BARUNA II (United States offi-  
12      cial number 996921).

13          (4) M/V ARCTIC ENTERPRISE (United States of-  
14      ficial number 248169).

15          (5) F/V ARCTIC I (United States official num-  
16      ber 678234).

17          (6) F/V ARCTIC III (United States official num-  
18      ber 647985).

19          (7) F/V ARCTIC IV (United States official num-  
20      ber 936302).

21          (8) M/V ARCTIC V (United States official num-  
22      ber 550931).

23          (9) F/V ARCTIC VI (United States official num-  
24      ber 988598).

1           (10) M/V ARCTIC BARUNA (United States offi-  
2           cial number 996920).

3           (11) M/V ATKA ENTERPRISE (United States of-  
4           ficial number 555416).

5           (12) M/V BERING ENTERPRISE (United States  
6           official number 610869).

7           (13) M/V BRISTOL ENTERPRISE (United States  
8           official number 604439).

9           (14) M/V GULF WIND (United States official  
10          number 611520).

11          (15) M/V GLACIER ENTERPRISE (United States  
12          official number 603561).

13          (16) M/V HARVESTER ENTERPRISE (United  
14          States official number 584902).

15          (17) M/V ISLAND ENTERPRISE (United States  
16          official number 610290).

17          (18) M/V KISKA ENTERPRISE (United States of-  
18          ficial number 642653).

19          (19) M/V KODIAK ENTERPRISE (United States  
20          official number 579450).

21          (20) M/V NORTHERN ENTERPRISE (United  
22          States official number 629978).

23          (21) M/V NORTHWEST ENTERPRISE (United  
24          States official number 609384).

1           (22) M/V OCEAN ENTERPRISE (United States  
2           official number 678236).

3           (23) M/V PACIFIC ENTERPRISE (United States  
4           official number 678237).

5           (24) M/V PACIFIC WIND (United States official  
6           number 624429).

7           (25) M/V SOUTHERN WIND (United States offi-  
8           cial number 625927).

9           (26) M/V ROYAL ENTERPRISE (United States  
10          official number 615663).

11          (27) M/V SEATTLE ENTERPRISE (United States  
12          official number 9047670).

13          (28) M/V UNIMAK ENTERPRISE (United States  
14          official number 637693).

15          (29) M/V U.S. ENTERPRISE (United States offi-  
16          cial number 921112).

17          (30) M/V WESTERN ENTERPRISE (United  
18          States official number 629826).

19          (31) M/V WESTWARD WIND (United States offi-  
20          cial number 595289).

21          (32) M/V ALL ALASKAN (United States official  
22          number 248773).

23          (33) F/V JUNO (United States official number  
24          260614).

1           (34) F/V ALASKA TRADER (United States offi-  
2           cial number 567664).

3           (35) F/V OCEAN TEMPEST (United States offi-  
4           cial number 509743).

5           (36) F/V SHELIKOF (United States official  
6           number 597967).

7           (37) F/V SEA PRODUCER (United States official  
8           number 284437).

9           (38) F/V MAGNUM (United States official num-  
10          ber 529675).

11          (39) F/V OCEANIC (United States official num-  
12          ber 500320).

13          (40) F/V SEA WIND (United States official  
14          number 610220).

15          (41) F/V SOURDOUGH (United States official  
16          number 597229).

17          (42) F/V RONDYS (United States official num-  
18          ber 291085).

19          (43) F/V SJOVIND (United States official num-  
20          ber 587409).

21          (44) F/V WINDY BAY (United States official  
22          number 296697).

23          (45) F/V ROYAL SEA (United States official  
24          number 518441).



1 (46) F/V SNOW KING (United States official  
2 number 5344721).

3 (47) F/V ROYAL KING (United States official  
4 number 592205).

5 (48) F/V RESOLUTE (United States official  
6 number 553631).

7 (49) F/V ARCTIC TRAWLER (United States offi-  
8 cial number 517242).

9 (50) F/V NORTHERN GLACIER (United States  
10 official number 663457).

11 (51) F/V AMERICAN CHAMPION (United States  
12 official number 527411).

13 (52) F/V SAGA SEA (United States official num-  
14 ber 965039).

15 (53) F/V HEATHER SEA (United States official  
16 number 946773).

17 (54) F/V CLAYMORE SEA (United States official  
18 number 935475).

19 (c) RELATIONSHIP TO OTHER LAW.—Nothing in this  
20 title shall be considered to amend, supersede, or otherwise  
21 affect—

22 (1) the Magnuson Fishery Conservation and  
23 Management Act (Public Law 94–265), as amended  
24 (16 U.S.C. 1801 et seq.);

1           (2) fishery management plans (including  
2       amendments thereto) in effect under that Act; or

3           (3) regulations promulgated pursuant to that  
4       Act.

5   **SEC. 204. EFFECTIVE DATE.**

6       The effective date of this title shall be the date of  
7   enactment of this Act.

○

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